

STATE OF MICHIGAN
COURT OF APPEALS

JOHN SAMMUT and CAROL SAMMUT,

Plaintiffs-Appellants,

v

CITY OF BIRMINGHAM,

Defendant-Appellant.

UNPUBLISHED

January 4, 2005

No. 250322

Oakland Circuit Court

LC No. 2002-041456-CZ

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) (claim barred by res judicata). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

In a prior action, defendant's Board of Zoning Appeals (BZA) determined that a fence on plaintiffs' property did not comply with defendant's zoning ordinance, and denied plaintiffs' application for a variance. Plaintiffs appealed that decision to the circuit court pursuant to MCL 125.585, and the court decided the matter in plaintiffs' favor. After the favorable resolution of their first action, plaintiffs commenced this action, alleging that defendant's conduct in the earlier dispute violated the Michigan Constitution's guarantee of fair and just treatment in the course of executive investigations and hearings. Const 1963, art 1, § 17. Plaintiffs sought exemplary damages for the alleged constitutional violation. The trial court concluded that plaintiffs' second action was barred by res judicata because the constitutional claim should have been raised in the earlier circuit court challenge to the BZA decision and, accordingly, granted summary disposition for defendant.

The doctrine of res judicata bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004). This Court applies the doctrine of res judicata broadly, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Id.* The question whether res judicata bars a subsequent action is reviewed de novo by this Court. *Id.* at 119.

The first two requirements were indisputably satisfied, and the trial court correctly determined that plaintiffs' second action arose from the same transaction as the first. All of plaintiffs' allegations in the second case—that the BZA and other city officials violated their own ordinance and procedures, improperly denied applications for permits and variances, and attempted to enforce the BZA's decision before the expiration of the appeals period—arose from the same transaction as the prior case, namely defendant's allegedly improper actions in regard to plaintiffs' fence. Indeed, plaintiffs' prior appeal of the BZA's decision was governed by MCL 125.585(11), which provides that the circuit court shall review a zoning board of appeals decision to ensure, among other matters, that it “[c]omplies with the constitution and laws of this state.” Consequently, the constitutionality of defendant's actions was a claim that could have been raised in the prior action.

Plaintiffs emphasize that the prior action was an appeal of the BZA's decision pursuant to MCL 125.585, and maintain that because they could not have raised their claim for constitutional damages before the BZA, they could not raise it before the trial court in their appeal. Plaintiffs argue that their constitutional action for damages did not form a “convenient trial unit” with their prior appeal of the BZA decision because MCL 125.585 does not authorize the trial court to award monetary damages for constitutional violations. Plaintiffs' reasoning is predicated on the erroneous assumption that MCL 125.585 restricts a circuit court's jurisdiction. But nothing in MCL 125.585 restricts a circuit court's general jurisdiction under the Michigan Constitution and the Revised Judicature Act. Const 1963, art 6, § 13; MCL 600.601 *et seq.* Plaintiffs therefore could have joined their constitutional claim and their BZA appeal pursuant to MCR 2.203; indeed, MCR 2.203(A) requires a plaintiff to join claims against a defendant that “arise[] out of the transaction or occurrence that is the subject matter of the action.”

Because there was no legal, jurisdictional, or procedural bar to plaintiffs filing a lawsuit that sought review of the BZA's decision under MCL 125.585, and also sought damages for the alleged constitutional violation, the third requirement for res judicata was satisfied. We therefore affirm the trial court's order granting defendant summary disposition under MCR 2.116(C)(7).

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly